UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
SEVENTH REGION

MACOMB OAKLAND REGIONAL CENTER, INC.[1]

Employer

and

JOANN L. WILDE CASE 7-RD-3198

Petitioner

and

INTERNATIONAL UNION, UNITED AUTOMOBILE,
AEROSPACE AND AGRICULTURAL IMPLEMENT
WORKERS OF AMERICA (UAW), AFL-CIO,
AND ITS LOCAL NO. 412[2]

Union

APPEARANCES:

Robert J. Finkel, Attorney, of Farmington Hills, Michigan, for the Employer.
JoAnn L. Wilde, of Clinton Township, Michigan, for the Petitioner.
Leonard Page, Attorney, of Detroit, Michigan, for the Union.

DECISION AND DIRECTION OF ELECTION

Upon a petition duly filed under Section 9(c) of the National Labor Relations Act, as amended, hereinafter referred to as the Act, a hearing was held before a hearing officer of the National Labor Relations Board, hereinafter referred to as the Board.

[1] The name of the Employer appears as corrected at the hearing.

[2] The name of the Union appears as corrected at the hearing.

Pursuant to the provisions of Section 3(b) of the Act, the Board has delegated its authority in this proceeding to the undersigned.

Upon the entire record in this proceeding,[3] the undersigned finds:

1. The hearing officer's rulings made at the hearing are free from prejudicial error and are hereby affirmed.

2. The Employer is engaged in commerce within the meaning of the Act and it will effectuate the purposes of the Act to assert jurisdiction herein.

3. The labor organization involved claims to represent certain employees of the Employer.

4. A question affecting commerce exists concerning the representation of certain employees of the Employer within the meaning of Section 9(c)(1) and Sections 2(6) and (7) of the Act.

The Employer, Macomb Oakland Regional Center, Inc., provides community residential services for persons with developmental disabilities and mental illness. The Petitioner seeks an election among two appropriate units. The first unit, Unit A, consists of approximately 216 full-time and regular part-time professional employees[4] employed by the Employer within its human services unit and employed at and out of the Employer's facilities located at 1270 Doris Road, Auburn Hills, Michigan, 16200 Nineteen Mile Road, Clinton Township, Michigan, and 217 East Sanalack Road, Sandusky, Michigan; but excluding all confidential employees, casual employees, guards and supervisors as defined in the Act. The second unit, Unit B, consists of approximately 55 full-time and regular part-time non-professional employees[5] employed by the Employer within its administrative support unit and employed at the Employer's facilities located at 1270 Doris Road, Auburn Hills, Michigan, 16200 Nineteen Mile Road, Clinton Township, Michigan, and 217 East Sanalack Road, Sandusky, Michigan; but excluding all confidential employees, casual employees, guards and supervisors as defined in the Act. At

[3] Briefs have been filed by the parties, which have been carefully considered.

[4] The parties stipulated that the following classifications are professional employees within the meaning of the Act, and are not managerial, supervisory or confidential employees within the meaning of the Act and are includable in the professional human services unit: admissions/discharge coordinator, clinical social worker, clinical social worker lead worker, community/home developer, community registered nurse, occupational therapist, physical therapist, physician, psychiatric registered nurse, psychiatrist, psychologist, registered dietitian, registered nurse trainer, social worker support coordinator, speech and language pathologist, therapeutic recreation specialist and vocational services specialist. There is one other classification, sexuality services lead worker, which the parties agreed will be eligible to vote subject to challenge regarding supervisory status.

[5] The parties stipulated that the following classifications of non-professional employees are includable in the non-professional administrative support unit: bookkeeper, data processor, data technician, mail clerk/receptionist, records technician, reimbursement technician and secretary.

the hearing the Union argued that the Petitioner's petition is prematurely filed under ***Mar-Jac Poultry Co.***, 136 NLRB 785 (1962), and that the petition should therefore be dismissed. In its brief, the Union concedes that ***Mar-Jac*** is not directly applicable but argues that the petition is premature as the parties have not had a "reasonable time" during which to bargain. The Employer contends that the petition is timely.

About 1985, the State of Michigan certified a predecessor labor organization as the representative of both the human services and administrative support units as separate units. At that time, the employer of the unit employees herein was known as Macomb Oakland Regional Center (MORC) and was operated by the state. The unit employees were considered state employees and were represented by UAW Local 6000.[6] Thereafter, sometime in 1996, the state cancelled its funding to MORC and the services which had been provided by MORC were thereafter provided by the Employer, Macomb Oakland Regional Center, Inc. (MORC, Inc.). The unit employees thereafter became represented by the Union herein, UAW Local 412.

Following the privatization of the Employer, the Union filed unfair labor practice charges against the Employer alleging certain violations of Section 8(a)(1) and (5) of the Act. Following an investigation of the charges, a complaint issued in Cases 7-CA-38775 and 7-CA-39267 alleging that the Employer violated Section 8(a)(1) and (5) of the Act when it unlawfully refused recognition to the Union, unlawfully made numerous unilateral changes in the terms and conditions of employment of its employees without giving prior notice and opportunity to bargain to the Union, and when, after it belatedly recognized the Union as the collective bargaining representative of its employees, it unlawfully withdrew recognition. Thereafter, a hearing was held before an Administrative Law Judge (ALJ) who issued a decision on April 29, 1998, recommending that the Board find that the Employer was a successor employer to MORC and engaged in certain unfair labor practices, including refusing to recognize the Union and unlawfully withdrawing recognition from the Union. On June 18, 1998, a Board Order issued adopting the recommendations, findings and conclusions of the ALJ.

Shortly after the issuance of the ALJ decision, the Union demanded that the Employer recognize and bargain in good faith with the Union by letter dated May 5, 1998. The Employer responded to the Union by letter dated May 22, 1998, prior to the issuance of the Board Order, indicating its willingness to comply with the ALJ decision and to recognize and bargain with the Union effective immediately. By letter dated June 12, 1998, the Union offered five dates for bargaining during the end of July and beginning of August 1998. The Union also requested an updated list of employees, addresses and job titles. By letter dated June 19, 1998, the Employer indicated its willingness to bargain on July 28, 1998, the Union's second earliest-proposed date. Sometime thereafter, the parties agreed to meet for bargaining on July 28. By letter dated July 23 the Employer provided information requested by the Union

[6] UAW Local 6000 represents state-employed employees exclusively.

including names, job classifications and addresses of unit employees. Then, by letter dated July 24, 1998, the Union cancelled the July 28 bargaining session "due to unforeseen circumstances." Sometime thereafter, the parties agreed to meet to bargain on September 24, 1998 and the Union cancelled this meeting. By letter dated September 23, the Union apologized for the cancellation of the September 24 meeting with "short notice" and requested further bargaining dates from the Employer during the months of October and November. By letter dated September 28, 1998, the Employer responded to the Union's request for further bargaining dates by indicating that the parties could discuss further bargaining dates at a scheduled meeting on October 2, 1998. However, the Union cancelled the October 2 meeting. The parties thereafter agreed to meet and finally did meet for their first bargaining session on October 20, 1998, almost five months after the Employer agreed to bargain with the Union.

Since October 20, 1998, the parties have met 11 times for bargaining: October 20, November 23 and December 14, 1998; and January 12, February 16, February 22, March 8, April 14, April 21, May 20 and June 29, 1999. At the time of the hearing herein, the parties were scheduled to meet for bargaining on August 3, 1999. The Union's bargaining committee has consisted of lead negotiator/UAW representative Mike Drugach, approximately five employees from the professional human services bargaining unit and approximately three employees from the administrative support bargaining unit. The Employer's bargaining committee has consisted of Peter Lynch, Director of Human Resources, and Robert J. Finkel, attorney for the Employer[7]. The meetings lasted on an average of one to two hours.

The record indicates that during the course of these 11 meetings, the parties have exchanged contract proposals, although neither party has presented a full contract proposal. The parties have thus far reached agreement on about five issues including grievance procedure, no strike/no lockout language, purpose and intent language, bereavement leave and floating holidays. The parties have had limited discussion regarding economic issues and the effective term of the agreement. By the Union's admission, the reason that the parties have not met more often or for longer sessions, and have not yet reached a full contract, is due, in part, to dissension among the employees on the Union's bargaining committee[8].

The Board's longstanding policy is that an affirmative bargaining order is the standard appropriate remedy for the restoration of the status quo after the unlawful refusal of an employer to recognize and bargain with an incumbent union which was the majority representative within the meaning of Section 9(a). This remedy applies regardless of whether the wrongdoing employer is the original or a successor to the statutory obligation to bargain with the incumbent union. ***Caterair International***, 322 NLRB 64 (1996); ***Williams Enterprises***, 312 NLRB 937, 940 (1993). In ***Franks Bros. Co. v. NLRB***, 321 U.S. 702 (1944),

[7] The parties stipulated that Lynch is a supervisor and/or manager within the meaning of Section 2(11) of the Act.

[8] During the course of negotiations, four of the nine employees on the Union's bargaining committee have resigned and only one has been replaced.

the Supreme Court expressly agreed with the Board that an affirmative bargaining order is an appropriate remedy even if a union has lost majority support since the unlawful refusal to bargain. In addressing the issue of whether such a bargaining order entailed an injustice to employees who might prefer a different union or no union at all, the Supreme Court stated:

> [A] Board order which requires an employer to bargain with a designated union is not intended to fix a permanent bargaining relationship without regard to new situations that may develop…. But, as the remedy here in question recognizes, *a bargaining relationship once rightfully established must be permitted to exist and function for reasonable period in which it can be given a fair chance to succeed*…. After such a reasonable period the Board may, in a proper proceeding and upon a proper showing, take steps in recognition of changed situations which might make appropriate changed bargaining relationships. ***Franks Bros. Co. v. NLRB,*** supra at 705-706 (citations omitted; emphasis added).

The Board's test for determining what is and what is not a reasonable period of time focuses on what has transpired during the time period under scrutiny rather than the length of time elapsed. The Board has considered various factors in determining what is a reasonable period of time. Among those are whether the parties are bargaining for a first contract; whether the employer engaged in meaningful good-faith negotiations over a substantial period of time; and whether an impasse in negotiations has been reached. In applying this multifactor standard, the Board has found a reasonable bargaining period to encompass as few as four months and as much as a full year of good-faith bargaining. ***Caterair International,*** supra at 68. The flexibility of such a standard is preferable to a remedial bargaining period of fixed duration. By emphasizing that the duration of insulated bargaining depends primarily on what transpired during bargaining, the policy encourages parties to attend to the bargaining process, not to the calendar. On the other hand, the possibility that a reasonable bargaining period may be met with only a few months of good-faith bargaining lessens the limiting effect of this remedy on employee free choice. ***Caterair International***, supra.

The Union argues that the petition herein is barred as it has not yet engaged in a reasonable period to bargain following reestablishment of the bargaining relationship. The record is clear that the five month hiatus before the commencement of bargaining was not the fault of the Employer. The Employer indicated its willingness to recognize the Union and engage in good-faith bargaining almost immediately following the Union's demand for recognition and bargaining on May 5, 1998. The record indicates that between the commencement of bargaining on October 20, and the filing of the petition herein, the parties have met 11 times during a period of more than 8 months and have reached agreement on several issues even though a full agreement has not been reached to date. The Union has not alleged that the Employer has been unwilling to meet or that it has bargained in bad faith. No unfair labor practice charges have been filed against the Employer during the course of bargaining following the Employer's agreement to bargain in May 1998. In applying the multifactor standard noted above regarding the reasonable period of time analysis, I find that

the parties here have engaged in meaningful bargaining for a reasonable period of time such that the decertification petition herein is not barred.

5. In view of the foregoing, the following employees in the currently recognized units constitute appropriate units for collective bargaining within the meaning of Section 9(b) of the Act:

UNIT A: All full-time and regular part-time professional employees employed by the Employer within its human services unit and employed at and out of the Employer's facilities located at 1270 Doris Road, Auburn Hills, Michigan, 16200 Nineteen Mile Road, Clinton Township, Michigan and 217 East Sanalack Road, Sandusky, Michigan; but excluding all confidential employees, casual employees, guards and supervisors as defined in the Act.

UNIT B: All full-time and regular part-time non-professional employees employed by the Employer within its administrative support unit and employed at the Employer's facilities located at 1270 Doris Road, Auburn Hills, Michigan, 16200 Nineteen Mile Road, Clinton Township, Michigan and 217 East Sanalack Road, Sandusky, Michigan; but excluding all confidential employees, casual employees, guards and supervisors as defined in the Act.

Those eligible shall vote as set forth in the attached Direction of Election.

Dated at Detroit, Michigan, this 11th day of August, 1999.

(SEAL)

/s/ William C. Schaub, Jr.
William C. Schaub, Jr., Regional Director
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